



CeDAR • CENTER FOR DISABILITY ADVOCACY RIGHTS, INC.

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BY FACSIMILE & MAIL

December 16, 1997

Cynthia L. Johnson, Director
Cash Management Policy & Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420, 401 14th Street, S.W.
Washington, D.C. 20227

RE: Proposed rule pursuant to
Debt Collective Improvement
Act of 1996 § 31001(x)

Dear Ms. Johnson:

These comments are submitted in response to the September 16, 1997 Notice of Proposed Rule Making (62 FR 48713) proposing to amend 31 C.F.R. Part 208. Thank you for the opportunity to comment on these proposed regs.

Interest of Center for Disability Advocacy Rights ("CeDAR"), Inc.

These comments are submitted on behalf of the Center for Disability Advocacy Rights ("CeDAR"), Inc. CeDAR is a not-for-profit poverty law organization in New York City. We serve hundreds of elderly individuals and persons with disabilities by advising and/or representing them in matters concerning public benefits - Social Security, Supplemental Security Income ("SSI"), public assistance, Medicaid, Food Stamps - and occasionally in other areas. We come from a federally-funded legal services background, but have been independent of federal funds since January 1996.

In addition to direct services to clients with disabilities and the elderly, CeDAR works with other poverty law advocates around the city, state, and country to monitor the delivery of services to our clients by federal, state, and local agencies, to identify and try to resolve problems, to train advocates for persons in our client base, etc.

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CeDAR's two attorneys have combined more than 15 years experience in the field of legal services to the poor, primarily in the Social Security/SSI field. We advise and represent literally hundreds of clients each year. We are also among class counsel in several class actions against agencies charged with delivery of benefits. In addition, we worked with counsel in Robinson v. Sullivan, a class action challenge to the policies and practices of the Social Security Administration and the Department of Treasury in situations where a Social Security or SSI claimant's check needed replacement. We are familiar not only with the implementation of the "first phase" of the change to EFT but also with local New York City policies regarding issuance of public assistance benefits. Moreover, I participated with several other New York City advocates in a task force a few years ago designed to try to promote cooperation between banks in the city and impoverished clients who were having difficulty establishing and/or maintaining accounts. Finally, CeDAR has a particular interest in the needs of persons with limited English proficiency and is part of a national group of advocates working with the Social Security Administration to ensure access to the agency by such persons.

Waivers must be available based on mental disability and/or linguistic and/or educational limitations.

The regulations propose to limit waiver of the requirement for electronic funds transfer for individuals be limited to situations where a hardship would be imposed due to a physical disability or geographic barrier. These limitations are too stringent.

Many mentally disabled individuals do not require representative payees but are nonetheless unable to tolerate interaction with standard financial institutions. Some such individuals are unable to tolerate the "crowds" in banking institutions and may also not be able to overcome fear of using ATM machines. They may be able to use the local "cashier" (with who they may be familiar from public assistance days), but not able to walk into a bank or other financial institution without being overcome.

Additionally, those who have limited English proficiency have difficulty in using financial institutions. While it is true that ATM machines in some areas offer an option of Spanish or Chinese, many individuals receiving federal benefits speak some language other than English, Spanish or Chinese or live in an area where multilingual ATMs are not available (or may have insufficient eyesight to use an ATM at all). Banks are not required to provide interpreters, even where the customer is unable to communicate in English. Individuals with limited English proficiency (including United States citizens) cannot rely on private financial institutions to provide them services in languages they can understand. Unlike federal agencies which have some responsibility to provide interpreter services, banks are under no such obligation.

Finally, persons who are unable to read or write may nonetheless be more than capable of handling their own money. Such persons have, in the past, gone to a cashier or, in some instances, a bank, cashed their checks, and used their funds. Such persons lack the capacity to understand the many mailers sent out by financial institutions and

will not know when regulations change, fees are increased, etc. General education about financial institutions, while critical, cannot resolve the problem for illiterate or truly uneducated individuals (or for those suffering organic problems which make them unable to learn and/or to read and write).

Finally, although this may be included in "geographic barriers", many individuals with disabilities are simply unable to go to a financial institution, even if one exists right around the corner. Such persons may be perfectly capable of handling their own funds, if they are permitted to use a local grocery store or "cashier" as they have been doing, but may not be able even to walk two or three blocks to a bank or to stand in the lines and negotiate the bureaucracy of less friendly financial institutions. We are aware of one branch of one bank in our service area that is truly wonderful with impoverished persons and persons with disabilities and the elderly. However, if that branch were to close, or to hire new people, our clients would be at a loss. And not every client lives close enough to that particular branch to use it. Geographic barriers come in many varieties and must be very loosely defined for purposes of waiver.

The regulations must allow for options for persons unable to produce identification currently acceptable to banking institutions.

Most commercial banks and many savings banks and other financial institutions will not open an account for an individual unless that individual has a previous or active account in another institution or can produce a driver's license, credit card, or other particularized form of identification. However, many poor persons, homeless persons, persons living in particular cramped quarters, persons who have been crime victims, and mentally ill individuals are unable to produce the kinds of identification required by many or most banking institutions. In some instances, advocacy by our agency with particular banking institutions with whom we have a relationship and to whom we can identify our client and confirm the client's eligibility for public benefits has resolved the problem. But such individual advocacy is only available for a limited number of persons - those who have a relationship with an advocacy organization that is willing to put itself on the line on behalf of its clients with a banking institution.

The regulations do not appear to address the requirements for opening an account at a financial institution. To the best of our knowledge, at least in New York State, no regulation requires a financial institution to set standards for identification required to open or operate an account. A great deal of discretion is given to the institution (and to the particular branch manager within most institutions). All too often, such discretion is exercised to the detriment of poor people, minorities, women, people with disabilities, and other disfavored groups. If most individuals are to be required to deal with financial institutions, the financial institutions must likewise be required to deal with them, and on a fair and equitable basis, given the individual's capabilities for, for example, producing identification.

We are also concerned about the ability of non-citizens to open and use accounts at financial institutions. Many citizen children are dependent on non-citizen parents or other caretakers to receive benefits on their behalf. The non-citizen parents or caretakers may not have the identification required by banking or other financial institutions. It is critical, if such children are to receive benefits to which they are entitled, that the parents or caretakers be able to open accounts on behalf of the children (and that the threat of deportation or other action by the Immigration and Naturalization Service not be present for opening or use of such an account by the parent or caretaker).

The regulations should require financial institutions to accept accounts based on the kind of identification available to impoverished individuals (Food Stamp ID, Social Security Card, Medicaid, etc.) or should, at minimum, allow persons who are not able to produce the identification demanded by financial institutions to use "cashiers" or other institutions they currently use to cash public assistance and/or federal benefit checks.

Availability of "reasonably-priced" accounts should not be limited to those who do not have accounts on any particular date.

The proposed regulations indicate that Treasury believes there is no need to protect persons who currently have a banking relationship from unreasonable pricing by banks. We believe that such persons do need protection for two reasons.

First, an individual's circumstances can change, making the need for "reasonably-priced" banking much more important at some future date than it might have been when the person began receiving federal checks. The assumption that a person who may have chosen a more expensive banking option at one time will always be able to afford to continue with that option is simply unreasonable. In fact, many of our disabled clients had bank accounts until they became disabled, unable to work, and then poor. These clients could once afford bank charges, but can no longer do so on their limited SSI or disability (or public assistance) income.

Second, individuals who receive government checks have no control over the increasing costs of banking. Even if the individual's particular circumstances do not change significantly, increasing costs of banking services (such as we have seen recently, for example, in the costs of ATM-access) may make what was once an affordable option no longer affordable.

We ask that the regulations require that anyone who asks be permitted to enroll in the lowest or most "reasonably-priced" banking option available under the regulations, regardless of any previous relationship with a financial institution.

Financial institutions must be prohibited from "freezing" accounts containing federally protected funds.

Our experience shows us that once federally-protected funds, such as Social Security or SSI, are placed into an account in a financial institution, creditors see these funds as available for attachment, regardless of federal law. While involvement of an

advocate or attorney can obtain release of funds erroneously attached or "frozen," most impoverished individuals do not have immediate access to an advocate or do not even know that their funds are protected from attachment. Even where an advocate intervenes, the client is often charged with a "service fee" by the bank for its erroneous agreement to freeze funds on behalf of a creditor. And many times the individual is unable to obtain release of the "frozen" funds in time to access critical monthly benefit payments. As a result, the individual's monthly benefits are paid into a "frozen" account, the individual is unable to pay rent, buy food, or meet other basic necessities. For someone living on a fixed and limited income, even a few weeks of being unable to access funds is critical.

The regulations should provide that any financial institution receiving direct deposit of federally protected funds is under an obligation to inform the person to whom the account belongs of any attempt to attach or freeze the funds in the account before such funds are affected. The financial institution should be required not only to provide the individual, an opportunity to demonstrate that the funds are protected but also to provide the individual with the information that the funds might be protected and inform the individual of his or her right to legal counsel.

Record keeping must be available to recipients.

Persons who receive funds under the SSI program often have to provide detailed records of their resources and income. We are concerned that any accounts set up under the Treasury regulations be required to provide, at little or no cost, copies of records of transactions that the individual may need to prove eligibility to federal agencies. Even now, many of our clients have great difficulty obtaining verification of their income and resources for many years in the past, although Social Security regularly requires benefit recipients to furnish such information. Such information should be provided on a cost-free basis or should be paid for by the agency requesting the information.

Public education is extremely important and must be provided in many languages and at many educational levels.

To the extent that persons will be required to receive funds through financial institutions, it is critical that public education be provided in as broad and accessible a manner as possible. We would encourage Treasury to fund community organizations and health providers (e.g., mental health) to participate in that educational campaign. In particular, it is critical that such education be designed to reach the broadest possible group of individuals, be provided in the widest possible variety of languages, and be targeted to those with limited education (as well as, perhaps, the better educated).

CeDAR supports and joins in the comments provided by the New York City Community Reinvestment Task Force.

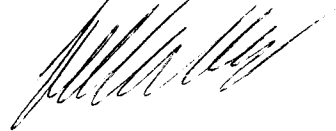
Because of time pressure, we must limit our comments to what is said above. However, we wish to note that we have read and fully support the comments submitted by the New York City Community Reinvestment Task Force. We have submitted the

above comments to emphasize particular points, but we also "sign on" to the comments submitted by the Task Force.

Conclusion.

Again, thank you for the opportunity to comment on these proposed regulations. It is to be hoped that the interests of the poor, of persons with disabilities, of the elderly, and of those with limited English proficiency will be seriously considered in the final regulations.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jill Ann Boskey", written in a cursive style.

Jill Ann Boskey